# In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 487

V. S. ANDERSON AND M. C. ANDERSON, COPARTNERS D/B/A PACIFIC MOULDED PRODUCTS COMPANY, PETITIONERS

*v.*

NATIONAL LABOR RELATIONS BOARD

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

### OPINIONS BELOW

The opinion of the court below (R. 492–495) is reported at 206 F. 2d 409. The Board's decision and order (R. 197–236) is reported at 99 N. L. R. B. 93.

### JURISDICTION

The judgment of the court below (R. 495–500) was entered on October 1, 1953. The petition for a writ of certiorari was filed on December 1, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

that "he expected the girls to cooperate with him and if the girls would form a committee and appoint some of the girls to come to his office and discuss things with him that the girls weren't satisfied with, he would be well pleased" (R. 213; 320, 388–389). Anderson warned them, however, that he "didn't want a union in there because unions only meant trouble and strikes, and that he would rather close his doors than have a union in there" (R. 213; 320).[2]

In a similar vein, James Jefferson, petitioners' labor relations consultant, thereafter addressed the pressroom employees and urged them to form a company union (R. 214–215, 216; 297–299, 353–355). Jefferson stated that he was aware of talk in the plant concerning the formation of a company union; he added that he had been in plants where company unions existed and that they had been most satisfactory (*ibid.*). He also declared that the employees were already enjoying all the benefits the Union was seeking for them, and that it would be to their advantage to vote against the Union in the forthcoming election (R. 216; 299).

B. *Petitioners promise economic benefits, threaten economic reprisals to induce rejection of the Union, and interrogate employees concern-*

[2] Just two days following this speech, Anderson met with a committee appointed by a number of employees who were disturbed over the prospect of continuing a six-day 48-hour workweek, and conferred with the committee about reducing the workweek to five days (R. 214; 321–322, 387–389).

*ing their Union sympathies.*—Concurrently with the above antiunion efforts, petitioners issued a series of newsletters in which they sought to pin upon the Union responsibility for the withholding of certain bonus payments (R. 219–220; 25, 26, 30, 31, 188). In 1950 petitioners, in order to combat an extremely high rate of turnover, had initiated a bonus system to promote stability of employment (R. 204; 404). Under the system, bonuses varying with the amounts earned by particular employees were paid at six-month intervals, in June and December (R. 204; 403). At the time of the hearing in the instant case, a suit brought by the California Department of Industrial Relations was pending in the California courts to determine whether employees who left their employment before the expiration of such a six-month interval were entitled to a *pro rata* share of the bonus (R. 204–205; 410–411). Inasmuch as there were approximately sixty employees in this category, petitioners did not distribute the total bonus fund at the end of 1950, but withheld the amount necessary to satisfy these claimants if the California courts ruled in their favor (R. 205; 406–407).

The only contact of the Union with the California litigation occurred in the early stages when one of its representatives assisted several of the affected employees in presenting their claims before the California Industrial Relations Board (R. 206; 407). Petitioners, nevertheless,

in various communications to the employees, accused the Union of causing the former employees to file "criminal charges" for payment of the bonuses (R. 206; 25); of "trying to take [the bonus] away from you with false testimony" (R. 208; 26); and of "trying to cheat you out of [the bonus], in order to give it to the ex-employees who didn't help you earn it" (R. 209; 30, 31, 188). On the other hand, the Company, in the same circulars, declared that "We have deposited in a special bank account the money that the Union is demanding," that the Company would "be able to get this balance for you," and that the employees would "receive [the bonus] if the management has its say" (R. 207, 208, 209; 26, 188).

Immediately before the Board-conducted election petitioners intensified their antiunion program. On February 19, a day before the scheduled election, Jefferson summoned several employees individually into a Company office and discussed the Union situation with them (R. 215; 322–323, 466–468). He told one of them, Marjorie Kasel, that he and petitioner V. S. Anderson were aware that she was the "instigator" of the Union in the plant, and that if the Union "didn't come in," the employees would get a raise (R. 215; 467–468, 472). Jefferson asked another employee, Catherine Sawyer, whether she was for or against the Union, told her to bear in mind how well the Company had treated its employees in the past, and said that the Company had numerous Govern-

ment orders which would require the employees to work Saturdays and Sundays at time-and-one-half and double time, respectively (R. 215; 323). He pointed out that the Union opposed overtime work, that the loss of overtime would mean a substantial loss of pay, and that the employees should "use their own discretion about letting the union in" (R. 215; 323). In conclusion, Jefferson promised that the Company "would use [the employees] even better if [the Company] won out in the election," and further declared that before the employees "left work that night [they] would all get a surprise" (R. 216; 324, 340). Jefferson also approached another employee, Harold Kimball, an active supporter of the Union, and asked him how he was going to vote in the election (R. 216; 300). During the course of their campaign against the Union, petitioners, despite the absence of any evidence that the Union opposed overtime, also declared repeatedly in newsletters to the employees that selection of the Union as bargaining representative would result in the loss of overtime work (R. 220; 27, 29, 31, 51).[3]

On February 19, each employee received from the Company a booklet and a one-page mimeographed notice (R. 211; 273, 326). Attached to

[3] Illustrative is a bulletin of February 9, 1951, which declared: "*The Union doesn't like overtime.* It wants a five-day week. Our National Defense *demands* full production which takes more time than five days a week. Do you want to cause a slow-down in our defense program? And, do you want to give up your overtime as well?" (R. 220; 51.)

the end of each booklet, which concerned itself generally with the Company's working rules and its bonus plan, was an "Hourly Wage Scale" setting forth for the various classifications of petitioners' employees higher rates of pay than they were then receiving (R. 211; 48–49, 274, 327–328, 356). The mimeographed notice, stapled to the cover of each booklet, set forth the name of the employee and his new wage rate, and read as follows (R. 211–212; 49):

> [Employee's Name]
>
> This wage scale and the rules set forth in this booklet is not a promise it is an offer to you.
>
> If the Company wins the election, the wage scale in the back of the book will go into effect February 26, 1951. Your classification will be [*Classification*], your hourly rate will be $[*Rate*], including shift differential, and, with this wage scale you will still have your bonus system.
>
> This offer is made to you in order to protect you against a wage freeze.
>
> Protect yourself, vote no against the C. I. O.
>
> If you fail to vote it will be a vote for the Union and a vote against an increase in wages now.

The day after this booklet was distributed, the scheduled election was conducted by the Board. The Union lost (R. 202; 32–33).

C. *Petitioners continue their antiunion campaign.*—Following the defeat of the Union on

February 20, 1951, petitioners continued their campaign against the Union, and, as promised in the booklet issued February 19, put the wage increase into effect (R. 212; 285–286, 356). As Jefferson explained, the wage increase "was offered to them [*i. e.*, the employees] and they, by their vote, accepted it" (R. 213; 286).

Thereafter, on the basis of timely objections filed by the Union to petitioners' conduct prior to the February 20 election, the Board set aside the election and directed a second election (R. 202–203).

On June 8, eleven days before the second election,[4] petitioners circularized their employees as follows (R. 209–210; 27–28, 258–259):

> The union-dominated National Labor Relations Board has ordered another election. The former election was set aside because the Company raised your wages in order to keep them from being frozen.
>
> * * * * *
>
> If the union wins the next election, [Regional Director] LeBaron will make another capricious ruling which will order your wages set back to where they were before the company raised them.
>
> * * * * *
>
> Come next week, you will start working six days. A copper shortage was the reason for the last several 5 day weeks. The union doesn't like overtime, it wants a five

[4] The record does not disclose the results of the second election (R. 203).

day week. It wants to slow down production at any cost.

* * * * *

The union is trying to get the company to settle the bonus suit by giving * * * others a share in it. The union knows it cannot win the suit. We cannot give your bonus money away to the friends of the union. It is your money. At the end of each month the company deposits your bonus money in the bank.

**II. The Board's conclusions and order**

The Board concluded (R. 217–218, 219–221, 230–231) that petitioners, in violation of Section (8) (a) (1) of the Act, had interfered with, restrained, and coerced their employees in the exercise of their rights guaranteed by Section 7 of the Act, by (1) threatening to close their plant before they would recognize a union; (2) threatening loss of overtime work if the Union was selected by the employees as their collective bargaining agent; (3) interrogating employees concerning their votes in an election conducted by the Board; (4) suggesting the formation of a company union; (5) promising better treatment and granting a wage increase to induce the employees to vote against the Union; (6) falsely accusing the Union of responsibility for depriving the employees of their full bonus payment and promising to pay the bonus if the Company had its say; and (7) falsely charging that if the em-

ployees voted for the Union the Board would direct the Company to rescind the wage increase previously given to the employees.

The Board ordered petitioners to cease and desist from the unfair labor practices found, and from in any other manner interfering with, restraining, and coercing their employees in the exercise of their rights guaranteed by Section 7 of the Act (R. 231–233). Affirmatively, the order requires petitioners to post the usual notices of compliance with its terms (R. 233–234).

### III. The decision of the court below

The court below concluded that the Board's findings were substantially supported by the record as a whole; rejected petitioners' contention that the various antiunion expressions attributed to them were mere statements of opinion protected by Section 8 (c) of the Act; and enforced the Board's order in full (R. 492–493).

## ARGUMENT

1. Petitioners' numerous challenges to the adequacy of the evidence supporting the Board's findings (Pet. 5–6, 14–16, 19–26, 31–34, 38–42, 44–45, 49–56) present no question warranting review by this Court. The court below, correctly we think, was "satisfied that the findings are substantially supported" by the record as a whole (R. 493). Save in exceptional circumstances, which are not present here, this Court does not normally undertake to assess the sufficiency of the evidence sup-

porting Board findings, for that is a question which "Congress has placed in the keeping of the Courts of Appeals." *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U. S. 474, 491; *National Labor Relations Board* v. *The Pittsburgh Steamship Company,* 340 U. S. 498, 502–503.

2. Equally unsubstantial as a basis for certiorari is petitioners' attack upon the clearly correct ruling of the court below that the various anti-union statements found by the Board to be violative of Section 8 (a) (1) of the Act were more than mere statements of opinion within the meaning of Section 8 (c). Petitioners, isolating these statements from their context, urge (Pet. 7–9, 16–18, 27–30, 35–37, 42–43, 46–48) that they fall within the protection of Section 8 (c) because, as so isolated, they contained no threat of reprisals or promise of benefits. But in making this contention petitioners overlook the fact that the various statements were intertwined with threats of reprisals against the employees if they voted for the Union and promises of economic benefits if they rejected it. Thus, petitioner Anderson's speech urging the employees to form a company union was coupled with the threat that "he would rather close his doors than have a union in there" (*supra,* pp. 3–4); petitioners' charge that the Union was responsible for nonpayment of the bonus to the employees was coupled with its promise to pay "if management has its say" (*supra,*

pp. 5–6); Jefferson's interrogation of one employee concerning her Union sympathies was accompanied by a promise of a wage increase if the Union was defeated (*supra*, pp. 6–7); his declaration to another employee that the Union opposed overtime work was linked with his promise that the Company "would use [the employees] even better if [the Company] won out in the election" (*supra*, p. 7); the Company's invitation to the employees to vote against the Union was coupled with a promise of a wage increase if the Union lost the election (*supra*, pp. 8–9); and the charge that the Board would, contrary to all Board precedent, order a rescission of the wage increase previously given to the employees if the Union won the election (*supra*, pp. 9–10), was but a thinly cloaked threat. Plainly, petitioners' efforts to defeat the Union, reinforced as they were with an avowed purpose to resort to economic rewards or sanctions to bring about that result, exceeded the permissible limits of expressions of opinion privileged by Section 8 (c). Cf., *e. g.*, *Joy Silk Mills* v. *National Labor Relations Board*, 185 F. 2d 732, 739–741 (C. A. D. C.), certiorari denied, 341 U. S. 914; *National Labor Relations Board* v. *LaSalle Steel Co.*, 178 F. 2d 829, 835 (C. A. 7), certiorari denied, 339 U. S. 963; *National Labor Relations Board* v. *Kropp Forge Co.*, 178 F. 2d 822, 828 (C. A. 7), certiorari denied, 340 U. S. 810; *National Labor Relations Board* v. *Bailey Co.*, 180 F. 2d 278, 280 (C. A. 6); *National Labor Relations*

*Board* v. *Deena Artware,* 198 F. 2d 645, 647, 650 (C. A. 6), certiorari denied, 345 U. S. 906; *National Labor Relations Board* v. *Ford,* 170 F. 2d 735, 738 (C. A. 6); *National Labor Relations Board* v. *Gate City Cotton Mills,* 167 F. 2d 647, 649 (C. A. 5); *National Labor Relations Board* v. *Williams,* 195 F. 2d 669, 672 (C. A. 4).

## CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT L. STERN,
*Acting Solicitor General.*

GEORGE J. BOTT,
*General Counsel,*
DAVID P. FINDLING,
*Associate General Counsel,*
DOMINICK L. MANOLI,
*Assistant General Counsel,*
JOHN E. JAY,
*Attorney,*
*National Labor Relations Board.*
JANUARY 1954.

# APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. V, 151, *et seq.*), are as follows:

### RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, * * *

### UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

* * * * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise. * * *

* * * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order,

and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its members, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1934